

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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**NICK'S GARAGE, INC.,**

Plaintiff,

v.

**NATIONWIDE AFFINITY INSURANCE COMPANY  
OF AMERICA; NATIONWIDE GENERAL  
INSURANCE COMPANY; NATIONWIDE MUTUAL  
FIRE INSURANCE COMPANY; NATIONWIDE  
MUTUAL INSURANCE COMPANY; NATIONWIDE  
PROPERTY AND CASUALTY INSURANCE  
COMPANY; and NATIONWIDE INSURANCE  
COMPANY OF AMERICA;**

**AMENDED COMPLAINT**

Civil Action No.: 5:12-cv-868

Defendants.

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Plaintiff, Nick's Garage, Inc. ("Nick's Garage"), by and through its attorneys, Bousquet Holstein PLLC, as and for its Amended Complaint against Nationwide Affinity Insurance Company Of America; Nationwide General Insurance Company; Nationwide Mutual Fire Insurance Company; Nationwide Mutual Insurance Company; Nationwide Property And Casualty Insurance Company; and Nationwide Insurance Company Of America; ("Defendants"), hereby states and alleges as follows:

1. Plaintiff, Nick's Garage is a New York corporation with a principal place of business at 638 West Genesee Street, Syracuse, New York 13204.
2. Defendant, Nationwide Affinity Insurance Company Of America is an insurance company organized under the laws of the state of Ohio, with a principal place of business at One Nationwide Plaza, Columbus, Ohio.

3. Defendant, Nationwide General Insurance Company is an insurance company organized under the laws of the state of Ohio, with a principal place of business at One Nationwide Plaza, Columbus, Ohio.

4. Defendant, Nationwide Mutual Fire Insurance Company is an insurance company organized under the laws of the state of Ohio, with a principal place of business at One Nationwide Plaza, Columbus, Ohio.

5. Defendant, Nationwide Mutual Insurance Company is an insurance company organized under the laws of the state of Ohio, with a principal place of business at One Nationwide Plaza, Columbus, Ohio.

6. Defendant, Nationwide Property and Casualty Insurance Company is an insurance company organized under the laws of the state of Ohio, with a principal place of business at One Nationwide Plaza, Columbus, Ohio.

7. Defendant, Nationwide Insurance Company Of America is an insurance company organized under the laws of the state of Iowa, with a principal place of business at 1100 Locust Street, Des Moines, Iowa.

8. Defendant engages in the business of selling insurance in New York.

**FACTS COMMON TO ALL CAUSES OF ACTION:**

9. Plaintiff is the assignee of claims by the following persons ("Assignors"), each of whom was in a motor vehicle accident involving an insured of Defendant's as indicated below:

	Assignor	Defendant's Insured	Policy No.	Vehicle Vin No. (collectively, the "Vehicles")
(i)	Card, Patricia	Card, Patricia	6631P917581	WBAPM77599NL86993
(ii)	Colombo, Therese	Colombo, Therese	6631F064047	KNADE123666099328
(iii)	Foster, Andrew	Foster, Andrew	6631F096493	1B3LC56J18N289729
(iv)	Foster, Andrew	Foster, Andrew	6631F096493	1B3LC56J18N289729

(v)	Gottuso, Casper	Gottuso, Casper	66P733134	JF1GD29664G523581
(vi)	Greenfield, Beryle	Greenfield, Beryle	6631B515372	1G4HD57248U127653
(vii)	Labulis, Edward	Labulis, Edward	6631P816871	1D7HU18216S662143
(viii)	Lyons, Daniel	Lyons, Daniel	6631P966178	1FMCU94168KB66706
(ix)	Marko, John	Marko, John	66P901636	5FNRL387X8B083628
(x)	McCauley, Daniel	McCauley, Daniel	66P996678	1GNDDT13S452221857
(xi)	New York Bakery	New York Bakery	66PE00226366 PE	1D3HV18TX9S788349
(xii)	Perry, Patricia	Perry, Patricia	6631P966246	KNDJF724X87516414
(xiii)	Sabene, Daniel	Sabene, Daniel	6631P958404	4A3AE45GX1E225790
(xiv)	Sieh, Maureen	Sieh, Maureen	6631P454126	2T1BR12E9XC252472
(xv)	Adams, Dave	Smoral, Leonard		2D4GP44L95R188894
(xvi)	Aitchison, Andrew	Nevidomsky, Johnny		1GNEK13T84R309980
(xvii)	Buccina, Rosario	Chong, Myongsun		4S2DF58X534600089
(xviii)	Cameron, Donald	Hay, Nicole		1G6EL12Y1TU610253
(xix)	Hunt, Brandon	Lupo, Christina		2G1WD58C279352144

10. At all relevant times to this Complaint, the relevant policies for each of Defendants' insureds listed above (collectively, the "Policies") were in effect.

11. Upon information and belief, the Assignors were involved in motor vehicle accidents resulting in property damage to the Vehicles (the "Accidents"), for which property damage claims were made against the Defendant as follows:

	Assignor	Policy No.	Claim No.:	Date of Loss
(i)	Card, Patricia	6631P917581	6631P91758102281101P/C1	2/28/2011
(ii)	Colombo, Therese	6631F064047	6631F06404710171001T/C1	10/17/2010
(iii)	Foster, Andrew	6631F096493	6631F096493	7/27/2011
(iv)	Foster, Andrew	6631F096493	6631F09649302071201A/F1	2/7/2012
(v)	Gottuso, Casper	66P733134	6631P73313405180801C/G1	5/18/2008
(vi)	Greenfield, Beryle	6631B515372	6631B51537207180801B/G1	7/18/2008
(vii)	Labulis, Edward	6631P816871	6631P81687101190801E/L1	1/19/2008

(viii)	Lyons, Daniel	6631P966178	6631P96617801071101D/L11	1/7/2011
(ix)	Marko, John	66P901636	6631P90163609020901J/M1	9/2/2009
(x)	McCauley, Daniel	66P996678	6631P99667801290801D/M1	1/29/2008
(xi)	New York Bakery	66PE00226366PE	6631PE002263082	8/26/2011
(xii)	Perry, Patricia	6631P966246	6631P96624603101101P/P1	3/10/2011
(xiii)	Sabene, Daniel	6631P958404	6631P95840404300801D/S1	4/30/2008
(xiv)	Sieh, Maureen	6631P454126	6631P45412610150701M/S1	10/15/2007
(xv)	Adams, Dave			12/23/2010
(xvi)	Aitchison, Andrew		6631BA63699810141051A/A3	10/14/2010
(xvii)	Buccina, Rosario		6631F09647912161001R/B11	12/16/2010
(xviii)	Cameron, Donald		6631F08375710311001D/C1	10/31/2010
(xix)	Hunt, Brandon		6631F08364302251101B/H1	2/25/2011

12. In the case of Assignors (i) – (xiv) (the "First Party Assignors"), the respective Policies provided insurance coverage for property damage to the automobiles listed above as indicated (the "Vehicles").

13. For Assignors (xv) – (xix) (the "Third Party Assignors"), the Accident was caused solely by the negligence of Defendant's Insured or another person operating the Vehicle with the permission of Defendant's Insured, and Defendant admitted liability by providing partial payment for repairs on the Assignors' Vehicles.

14. In each case, Defendant were obligated to provide enough coverage to restore the Vehicles to the same condition they were in immediately prior to the Accidents.

15. Each of the Assignors took their respective Vehicle to Plaintiff for repairs.

16. Each of the Assignors made Plaintiff his/her Designated Representative as provided for by regulation.

17. With respect to each of the Vehicles, Plaintiff provided the Defendant with an Estimate that reflected the amount necessary to return the respective Vehicle to its pre-Accident condition.

18. With respect to each of the Vehicles, the Defendant provided Plaintiff with copies of its estimates for repairs (the "Insurer Estimate").

19. The Insurer's Estimate was insufficient to repair the Vehicles to their pre-Accident condition and in compliance with the New York State Insurance Laws and Regulations.

20. On or about the following dates, Plaintiff served upon Defendant Notices of Deficiencies (the "Notice") informing Defendant that there were open items and that an agreed upon amount had not been reached for the repairs:

	Assignor	Policy No.	Date of Notice of Deficiency
(i)	Card, Patricia	6631P917581	3/28/2011
(ii)	Colombo, Therese	6631F064047	10/24/2010
(iii)	Foster, Andrew	6631F096493	8/11/2011
(iv)	Foster, Andrew	6631F096493	2/21/2012
(v)	Gottuso, Casper	66P733134	6/17/2008
(vi)	Greenfield, Beryle	6631B515372	8/21/2008
(vii)	Labulis, Edward	6631P816871	2/19/2008
(viii)	Lyons, Daniel	6631P966178	3/3/2011
(ix)	Marko, John	66P901636	9/30/2009
(x)	McCauley, Daniel	66P996678	2/8/2008
(xi)	New York Bakery	66PE00226366PE	10/19/2011
(xii)	Perry, Patricia	6631P966246	3/28/2010
(xiii)	Sabene, Daniel	6631P958404	6/18/2008
(xiv)	Sieh, Maureen	6631P454126	2/12/2008
(xv)	Adams, Dave		1/27/2011
(xvi)	Aitchison, Andrew		11/4/2010
(xvii)	Buccina, Rosario		2/28/2010
(xviii)	Cameron, Donald		1/4/2011
(xix)	Hunt, Brandon		4/1/2011

21. Defendant impeded and delayed fair settlement by, among other things, dictating and allocating price allowances, setting arbitrary price caps, refusing to negotiate labor rates, refusing to pay proper amounts for paint and parts invoices, and in many cases by failing to inspect or re-inspect the Vehicles within the time frames specified by regulation.

22. As a result of Defendant's actions and/or inaction as set forth above, Defendant failed to negotiate in good faith pursuant 11 NYCRR Part 216 (" Regulation 64").

**Payment and Amount Owed**

23. Plaintiff completed the repairs to the Vehicles to restore them to the same condition they were in immediately prior to the loss.

24. In each of the above referenced claims of the Assignors, Defendant failed to pay Plaintiff for the full amount required to put the respective Vehicle into its pre-accident condition.

25. In total, deficiencies of the following amounts remain due and owing to Plaintiff as a result of its repairs to the Vehicles (the "Deficiency").

	Assignor	Policy No.	Deficiency Amount
(i)	Card, Patricia	6631P917581	\$1,405.89
(ii)	Colombo, Therese	6631F064047	\$659.02
(iii)	Foster, Andrew	6631F096493	\$1,524.02
(iv)	Foster, Andrew	6631F096493	\$1,321.92
(v)	Gottuso, Casper	66P733134	\$2,072.98
(vi)	Greenfield, Beryle	6631B515372	\$3,129.73
(vii)	Labulis, Edward	6631P816871	\$2,054.79
(viii)	Lyons, Daniel	6631P966178	\$1,954.57
(ix)	Marko, John	66P901636	\$3,357.35
(x)	McCauley, Daniel	66P996678	\$1,067.61
(xi)	New York Bakery	66PE00226366PE	\$2,507.84
(xii)	Perry, Patricia	6631P966246	\$662.83
(xiii)	Sabene, Daniel	6631P958404	\$1,754.15
(xiv)	Sieh, Maureen	6631P454126	\$1,151.44
(xv)	Adams, Dave		\$1,734.48

(xvi)	Aitchison, Andrew		\$1,286.50
(xvii)	Buccina, Rosario		\$1,422.45
(xviii)	Cameron, Donald		\$1,090.93
(xix)	Hunt, Brandon		\$2,522.59

### **FIRST CAUSE OF ACTION**

26. Plaintiff repeats and realleges each and every allegation heretofore made in paragraphs 1 through 28 as if fully set forth herein.

27. Defendants have refused to pay the Deficiencies for repairs on the First Party Assignors' Vehicles and thereby has violated its obligation under the Policies and New York Insurance Law and regulations to repair the Vehicles to their pre-accident condition.

28. As a result of the foregoing, Plaintiff is entitled to damages from Defendant in the amount of \$24,624.14, together with interest at the statutory rate.

### **SECOND CAUSE OF ACTION**

29. Plaintiff repeats and realleges each and every allegation heretofore made in paragraphs 1 through 28 as if fully set forth herein.

30. Plaintiff has had numerous dealings with Defendant over the years involving claims by consumer customers of Plaintiff's against Defendant for coverage for automobile repairs.

31. Defendant frequently provides a lower estimate of the cost of repairs than that which is actually required to repair a given vehicle to its pre-loss condition.

32. With respect to Assignors (i)-(iv), (viii), (xi)-(xii), and (xv)-(xix) and the related Accidents listed above, Defendant limited the costs it would cover to repair the Vehicles to less than the full amount necessary to repair the Vehicles to their pre-Accident condition.

33. Defendant's limitation of costs was a material deceptive action because it knew when it made its limitation that it was not providing the full amount necessary to restore the Vehicles to their pre-Accident condition.

34. Defendant's failure to negotiate all elements of the specified claim as required by regulation constitutes a deceptive business practice within the meaning of General Business Law §349.

35. Plaintiff has been injured because Plaintiff has not been paid the full cost of the repairs that were completed on the Vehicles.

36. As a result of the forgoing, Defendant has repeatedly violated General Business Law §349 and Plaintiff is entitled to actual damages for each of the violations specified herein in the amount of \$18,093.04 and reasonable attorney fees.

WHEREFORE, Plaintiff respectfully submits that this Court enter an Order and Judgment awarding Plaintiff the following:

- a) On its First Cause of Action in the amount of \$24,624.14;
  - b) On its Second Cause of Action in the amount of \$18,093.04 plus attorney fees,
- and;
- d) Such other and further relief as the Court deems just and proper.



Dated: March 26, 2013

BOUSQUET HOLSTEIN PLLC  
Formerly known as Green & Seifter, Attorneys, PLLC



Lawrence M. Ordway, Jr., Esq.

Bar Roll No.: 509310

Cecelia R.S. Cannon, Esq.

Bar Roll No.: 515626

Attorneys for Plaintiff

110 West Fayette Street, Suite 900

Syracuse, New York 13202

Telephone: (315) 422-1391

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